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Letter Ruling 93-15: Security Corporation Classification; Products Liability Policy

October 22, 1993

You have requested a ruling on behalf of ("Corporation") with respect to G.L. c. 63, § 38B. Your question is whether Corporation can be classified as a security corporation where it holds a products liability insurance policy which pertains to potential claims which might arise as a result of Corporation's prior business.

I. Facts

Corporation is a Massachusetts corporation which was incorporated in 1946. Prior to November 30, 1989 (the "Sale Date") Corporation serviced and sold parts for heavy construction equipment under a different name, ("Prior Co."). On the Sale Date Corporation sold its operating assets and the use of its name to an unaffiliated corporation.

During its years as Prior Co., Corporation maintained products liability insurance (the "Insurance") to protect and preserve its assets. Subsequent to the Sale Date, Corporation continued to maintain this insurance. When the current policy expires, Corporation intends to renew it.

Corporation has approximately dollars invested in Massachusetts municipal bonds. It has no employees.

II. Discussion

General Laws c. 63, § 38B provides preferential excise tax treatment for every domestic business corporation or foreign corporation that is not a DISC "which is engaged exclusively in buying, selling, dealing in or holding securities on its own behalf and not as a broker." The exclusivity requirement in this provision is to be strictly construed. "The fact that a major portion of [a corporation's] activities may have fit the statutory definition does not satisfy the statutory requirement." State Tax Commission v. PoGM Co., 369 Mass. 611, 613 (1976). See Chatham Corporation v. State Tax Commission, 363 Mass. 216, 219 (1972).

Previously, we have recognized that a security corporation may own assets that are necessary in the conduct of its investment business, such as office furniture and supplies, and key man life insurance. See LR 86-1. In LR 86-1 we extended this logic to a situation where a security corporation purchased annuities to meet pre-existing obligations (in the nature of deferred compensation) to corporate employees. These obligations had arisen during the corporation's time as an operating company, prior to its request for classification under c. 63, § 38B.

The facts here are sufficiently analogous to those in LR 86-1. The Corporation maintains the

Insurance to insulate its assets from liability. While products liability insurance is not typically necessary in the context of an investment business, it is in this instance due to the Corporation's prior activities. While the Corporation once engaged in business activity which is impermissible under c. 63, § 38B, it has ceased these activities.

III. Conclusion

The mere acquisition and ownership of the Insurance will not preclude the Corporation from being classified as a security corporation. Moreover, Corporation may, as a security corporation, hold the Insurance and renew it upon expiration, so long as it otherwise meets with the requirements of c. 63, § 38B.

Very truly yours,

Mitchell Adams
Commissioner of Revenue
October 22, 1993
LR 93-15